

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA  
SOUTHERN DIVISION

THE HONORABLE JAMES V. SELNA, JUDGE PRESIDING

DOROTHY MCKAY, et al.,  
Plaintiffs,  
SACV-12-01458-JVS  
  
SHERIFF SANDRA HUTCHENS,  
etc., et al.,  
Defendants

REPORTER'S TRANSCRIPT OF PROCEEDINGS

Santa Ana, California

October 29, 2012

SHARON A. SEFFENS, RPR  
United States District Courthouse  
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1 SANTA ANA, CALIFORNIA; MONDAY, OCTOBER 29, 2012: 1:30 P.M.

2 THE CLERK: Item No. 24, SACV-12-1458-JVS,  
3 Dorothy McKay, et al., versus Sheriff Sandra Hutchens,  
4 etc., et al.

5 Counsel, please step forward and state your  
6 appearances.

7 MS. VAN RIPER: Good afternoon, Your Honor.  
8 Marianne Van Riper on behalf of the O.C. Sheriff's  
9 Department and Sandra Hutchens.

10 MS. WALSH: Good afternoon, Your Honor. Nicole  
11 Walsh, Deputy County Counsel, on behalf of O.C. Sheriff  
12 Sandra Hutchens and the Orange County Sheriff's Department.

13 MR. MICHEL: Good afternoon, Your Honor. Chuck  
14 Michel on behalf of plaintiffs.

15 MR. BRADY: Good afternoon, Your Honor. Sean  
16 Brady on behalf of plaintiffs.

17 THE COURT: Good afternoon.

18 I trust you have all seen the tentative.

19 MS. VAN RIPER: Yes, Your Honor.

20 MR. MICHEL: Yes, Your Honor.

21 THE COURT: Mr. Michel.

22 MR. MICHEL: Just a couple of things. I don't  
23 think that I am frankly going to change the Court's mind,  
24 but I think that I do get from the Court's tentative sort of  
25 an acknowledgment that there are some issues here that need

1 to be resolved probably by a higher court. I think that's  
2 sort of the consensus -- I don't want to speak for my  
3 colleagues, but I think that's sort of the consensus among  
4 the litigants as well. So what I would simply ask is  
5 that -- I will call your attention to a couple of things in  
6 the tentative which maybe the Court might like to put a  
7 little finer point on perhaps.

8 First of all, I think I need to preserve -- make  
9 sure I am preserving my equal protection argument. I want  
10 to make clear that that's not waived.

11 THE COURT: Well, I am simply denying the  
12 injunction. I am not ruling as a matter of law that any of  
13 the claims aren't sufficiently pled.

14 MR. MICHEL: But if our equal protection argument  
15 is correct, if the Court accepted it, then the Court  
16 would have to -- for that matter, this other argument this  
17 afternoon -- I understand the Court would be granting the  
18 injunction, right?

19 THE COURT: I'm simply holding -- you know, the  
20 preliminary injunction standard is the likelihood of  
21 prevailing. Simply because I hold there is no likelihood to  
22 prevail, I haven't ruled as a matter of law that the claim  
23 is invalid.

24 MR. MICHEL: Right, but you didn't rule that there  
25 is no likelihood -- the tentative doesn't address whether or

1 not there is a likelihood of prevailing on any of the equal  
2 protection claims, which could also be grounds for an  
3 injunction. So I just need to make sure that there is not  
4 some kind of an implied waiver or something --

5 THE COURT: No, there isn't.

6 MR. MICHEL: Okay. The other thing is I guess  
7 sort of getting to that substantial question -- well,  
8 first let me just clarify one thing in the last paragraph  
9 of the Court's tentative. It says, "Neither California or  
10 the Orange County Sheriff's Department categorically ban  
11 the public carrying of a handgun." I think the Court  
12 probably understands this, but I want to make sure that  
13 that -- that phrase is a bit -- could be construed as a bit  
14 confusing.

15 The reason that this case is different from  
16 Richards and Peruta is -- and the Richards and Peruta  
17 decisions both sort of relied on the ability to carry an  
18 unloaded, unconcealed handgun in public pretty much at any  
19 time, not just in those specific instances listed in the  
20 opposition where you go from one place to another. You are  
21 taking it to a gun store to be repaired or sold or taking it  
22 to a campsite or something like that. There was an ability  
23 to carry an unloaded, unconcealed handgun in public anywhere  
24 essentially other than sensitive places, a courthouse or  
25 whatever. And because of that ability, the Richards court

1 and the Peruta court said the Second Amendment was not  
2 infringed because you could have this unloaded, unconcealed  
3 gun for self-defense. That was one of the reasons for their  
4 -- part of their rationale.

5 The reason this case is different is because as of  
6 January 1 of this year the law changed so that you can no  
7 longer carry an unloaded, unconcealed handgun in public.  
8 You only have those specific limited exceptions where you  
9 can take it to or from a specific place or whatever the  
10 Penal Code lays out. So that takes away one of the bases  
11 for the Richards and Peruta holdings, which is why this case  
12 became more important to litigate.

13 So to the extent that -- while the Court uses the  
14 phrase "categorically," it's mischaracterizing that  
15 distinction. I just think the Court may want to take a look  
16 at whether or not it wants to say it a little bit  
17 differently.

18 THE COURT: I'm not sure I do.

19 MR. MICHEL: The point is that it is not -- there  
20 is no -- the State does now categorically ban the public  
21 carrying of a handgun unless you are going to or from a  
22 specific place in a locked container, so you can't carry it  
23 unloaded, unconcealed in a holster for self-defense for what  
24 it's worth.

25 THE COURT: Well, it seems to me that this is an

1 issue that for a lot of reasons really needs to be decided  
2 on a full record. Whether that can be made on cross-motions  
3 for summary judgment or whether we actually have to have a  
4 trial -- I would be very reluctant to make a substantive  
5 ruling without a full record, and it seems to me -- I deny  
6 the motion for other reasons, but it seems to me that this  
7 type of a motion -- this issue requires a full hearing given  
8 the ramifications of the relief sought, and before I would  
9 grant that relief either on an interim basis or on a full  
10 basis, I really think we need to have a full evidentiary  
11 hearing.

12 MR. MICHEL: May I ask -- with all due respect,  
13 from our perspective, this is a purely legal question. What  
14 factual issues would there be to explore? I mean, the  
15 Second Amendment protects the fundamental individual right  
16 to bear arms in public, and there is a policy that says  
17 unless you have a special need -- I don't think there is any  
18 disagreement with those facts.

19 THE COURT: I can't parse out the case today as I  
20 sit here. But that's my sense, that before I decide this  
21 issue, I want a full record. You suggest there is nothing  
22 more to present. Perhaps so, but I suspect there is more to  
23 present.

24 Okay, the tentative will be the order of the  
25 Court. Thank you, and thank you for your patience this

1 afternoon.

2 (Whereupon, the proceedings were concluded.)

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5 CERTIFICATE

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7 I hereby certify that pursuant to Section 753,  
8 Title 28, United States Code, the foregoing is a true and  
9 correct transcript of the stenographically reported  
10 proceedings held in the above-entitled matter and that the  
11 transcript page format is in conformance with the  
12 regulations of the Judicial Conference of the United States.

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14 Date: November 28, 2012

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/S/ Sharon A. Seffens 11/28/12

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SHARON A. SEFFENS, U.S. COURT REPORTER

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SHARON SEFFENS, U.S. DISTRICT COURT REPORTER